

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARLIN AUDRY SLEEMAN,

Defendant-Appellee.

UNPUBLISHED

May 24, 2005

No. 253510

Kent Circuit Court

LC No. 03-002588-AR

Before: Neff, P.J., and White and Talbot, JJ.

Talbot, J. (*concurring*).

I fully concur with the majority opinion. I write separately to give the trial court some personal observation regarding the type of instruction that may survive a constitutional challenge for vagueness. After much research, it is not certain that any definition of the word “indecent” will clearly pass constitutional muster as applied to the facts of this case. Many courts have, however, upheld statutes that proscribe public indecency against constitutional vagueness challenges. I believe that the best definition of “indecent” that I have found comes from the United States Manual for Courts-Martial (MCM), which states: “‘Indecent’ language is that which is grossly offensive to modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. . . . The language must violate community standards.” *US v Negron*, 58 MJ 834, 840 (N-M Ct Crim App, 2003), quoting MCM, Part IV, ¶ 89c.

Although the term “indecent” in the MCM refers to language, I believe that this definition can be applied equally to conduct. Indecent conduct would, therefore, be conduct that is grossly offensive to the community’s standards of modesty, decency, or propriety, or shocks the moral sense, because of its vulgar, filthy, or disgusting nature, or its tendency to incite lustful thought. This narrowing definition of the term “indecent,” while not perfect, appears to adequately put a defendant on notice of what type of behavior is proscribed by MCL 750.167(1)(f) and sufficiently limit the statute’s arbitrary and discriminatory enforcement so as to prevent it from being facially invalid. Whether this definition would be overbroad as applied to defendant’s conduct in the present case in the face of a First Amendment challenge, however, must still be determined in the first instance by the trial court. I, therefore, leave it to the prosecutor and the trial court to determine how, or whether, to proceed with this case on remand.

/s/ Michael J. Talbot